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August 29, 2002

TO: Each Supervisor

FROM: James A. Noyes
Director of Public Works

ANNUAL SOFT-BOTTOM CHANNEL CLEARING STATUS OF PERMIT REQUESTS

In 1997, Public Works secured permits from the U.S. Army Corps of Engineers and the Regional Water Quality Control Board (RWQCB) for annual maintenance clearing of 100 reaches of soft-bottom channels throughout the County of Los Angeles. Your Board may remember the contentious negotiations that took place between Public Works, the Corps, and the RWQCB prior to the issuance of these permits. Since then, Public Works has performed the work while complying with the conditions of the permits. These permits authorize us to perform annual necessary maintenance activities in our soft-bottom channels, to ensure protection of nearby homes and businesses from the threat of flooding. The permits require that we start our clearing operation no earlier than September 16 of each year.

The Corps issued Nationwide Permit (NWP) 31, which allows Public Works to perform the channel clearing, while the RWQCB issued a Clean Water Act Section 401 Certification required to make the NWP 31 effective. Both permits were to have expired on February 11, 2002. We applied for renewals of both permits in December 2001. The NWP 31 was extended one year by a Federal rulemaking, at least with respect to activities not involving endangered species. However, the RWQCB Section 401 Certification has not yet been renewed.

The RWQCB's principal objection to issuance appears to be its insistence on a consultation regarding endangered species. It is Public Works' position that such endangered species issues are a Federal, and not a RWQCB, responsibility. Our prior verbal understanding with the RWQCB was that renewal of the Section 401 Certification would occur by July 2002.

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With respect to the issue of endangered species, the Federal regulatory agencies have, to date, been cooperative. In accordance with their Federal mandate, the Corps has been coordinating with the Federal Fish and Wildlife Services (FWS) on endangered species issues. In May 2002, FWS requested that biological surveys for eight endangered species be conducted in 54 of the 100 soft-bottom channels (presumably FWS believes it unlikely that endangered species exist in the balance of the 100 soft-bottom channels). The surveys for the 54 soft-bottom channels are in progress. To date, endangered species have been found in three reaches; ten other reaches were found not to contain endangered species. The Corps has extended our old NWP 31 for the soft-bottom channels that do not have endangered species issues, in accord with the rulemaking noted above. However, without the 401 Certification from the RWQCB, we are not able to proceed with the clearing of any of the channels.

County Counsel and outside counsel with expertise in environmental law have been assisting us in formulating multiple strategies and contingency plans for dealing with our difficulties with the RWQCB. We have also scheduled a meeting with the Corps and RWQCB to discuss the urgency of our situation.

We will keep your Board apprised of any developments in this matter. If you have any questions, please call me or have your staff contact Brian Sasaki at (626) 458-4008.

Cl:sw/ro

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cc: Chief Administrative Office
Executive Office
County Counsel (Dave Michaelson)